

Deputy First Minister and Cabinet Secretary for
Covid Recovery
An Leas Phrìomh Mhinistear agus Ath-shlànachadh
Cobhid
John Swinney BPA/MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

T : 0300 244 4000
E : scottish.ministers@gov.scot

Judith Robertson
99 McDonald Road
Edinburgh EH7 4NS
Hello@scottishhumanrights.com

Our Reference: 202100241689
Your Reference: Letter from Scottish Human Rights Commission

1 November 2021

Dear Judith,

Thank you for your letter of 22 September 2021, about Covid-19 Vaccine Certification and the human rights considerations.

Please accept my apologies for the delay in responding to your letter, which falls below the standard of service we would normally expect to deliver on correspondence. My officials have advised me that the Scottish Government has received a significant increase in correspondence due to the ongoing Covid-19 pandemic.

In our view, based on the evidence currently available, the targeted scheme that we have introduced is a proportionate measure which will meet our key aims – which are to reduce transmission risks, reduce the risk of serious illness and death, and encourage uptake of the vaccine, while keeping late night venues and large events open for business. If the choice is between sectors and settings being closed, or a limited certification scheme being used to keep them open, we believe that it is right and proportionate to make a choice in favour of a limited certification scheme. As I said at the Covid-19 Recovery Committee on 30 September, I agree with you that the fundamental questions hinge on the issue of proportionality, and that we must be able to satisfy ourselves on this for any measures that we take forward.

We have taken – and will continue to take – an equality and human rights approach to ensure the policy does not disproportionately disadvantage any community. As supported by a published evidence paper Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



using the “Four Harms” approach – which you can find [here](#) – the scope of the scheme has been carefully and deliberately limited to high risk activities where the balance of public health risk clearly outweighs other rights considerations, and is designed to respect the rights of individuals.

Ministers and officials have had considerable engagement with human rights, children’s rights and equality stakeholders representing each of the protected characteristics under the Equality Act. We have taken account of their views and evidence in considering the policy options and assessing the impacts, including those on the groups you highlight in your letter. We have now published our impact assessments which you can find [here](#). These reflect our consideration of human rights including the necessity and proportionality of the policy. They also set out a range of potential impacts, both positive and negative, recognising amongst other things that uptake of the vaccine is lower for some groups.

While including testing as a potential option in terms of mitigation, we do not consider it appropriate at this stage. In part, this is because it could undermine one of our policy aims to increase uptake of the vaccine. Moreover, a lot more work is needed on the best approach including the appropriateness of self-testing in this context. Needless to say, we continue to work extremely closely with Health Boards and other partners to deliver our inclusive vaccinations programme, and ensure it responds to evidence of low uptake in certain communities. [Recent data](#) from Public Health Scotland shows clearly there is more to do.

In terms of the potential for Certification to be used more widely – that is, beyond regulated settings - our Guidance is clear about the places in which the use of Certification is appropriate. The guidance also makes clear that organisations not covered by the Government’s scheme who ask for proof of vaccination are required to meet their obligations under all relevant law including data protection, the Equality Act and Human Rights.

As you know, Ministers must review the regulations at least every three weeks to assess whether any requirement in the regulations is still necessary and proportionate. This will be informed by a range of evidence from a four harms perspective. While the default position is that the regulations are due to expire on 28 February 2022, I can assure you that we do not want to have the scheme in place for any longer than is necessary.

Finally, I would like to emphasise that the government is fully committed to embedding human rights in all our work. The First Minister outlined, when she introduced the Programme for Government 2021-22, that we will ensure Scotland is a global leader in human rights through a new Human Rights Bill, which will include, as far as possible within devolved competence, incorporation of four UN human rights treaties into Scots Law. We have also started the process for establishing the statutory public inquiry into the handling of the pandemic. This inquiry will take a person-centred, human rights based approach to ensure that every person and organisation taking part can meaningfully participate, be treated fairly, and be empowered to take part. In reporting, we expect the inquiry to demonstrate that this approach has informed its recommendations.

I hope this letter has addressed all the points you raised. Please be assured that the Scottish Government’s priorities are to continue to lead Scotland safely through and out of the COVID pandemic. We aim to address the inequalities made worse by Covid-19 by making progress towards a wellbeing economy and accelerating the provision of inclusive, person-centred public services.

Yours sincerely

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020



Ye suth
John Swinney

JOHN SWINNEY

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

